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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/009,576	08/27/2002	Lewis Dewi	NIDN-73247	3162

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EXAMINER

JONES, DAMERON LEVEST

ART UNIT PAPER NUMBER

1618

DATE MAILED: 09/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/009,576

Applicant(s)

DEWI ET AL.

Examiner

D. L. Jones

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-6,8-10,13 and 14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 4-6, 8-10, 13, and 14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

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RESPONSE TO APPLICANT'S REQUEST FOR RECONSIDERATION

1. The Examiner acknowledges Applicant's request for reconsideration filed 6/30/06.

Note: Claims 1, 4-6, 8-10, 13, and 14 are pending.

103 Rejection

2. The rejection of claims 1, 4-6, 8-10, 13, and 14 under 35 USC 103(a) as being unpatentable over Suthanthiran et al (US Patent No. 4,994,013) is MAINTAINED for reasons of record in the office action mailed 2/28/06 and those set forth below.

In summary, Applicant asserts that the instant invention is distinguished over the cited prior art because Suthanthiran only discloses that the radioactive material is absorbed by radioactive absorbing material used to coat the substrate/rod. Thus, the reference fails to disclose, teach, or suggest that the radioactive material is adsorbed onto a substrate as is in the claimed invention. In addition, applicant asserts that Suthanthiran requires its marker rod to be coated with a radioactive absorbing material. Also, Applicant asserts that the pellet of Suthanthiran is encapsulated by a titanium container or another material other than titanium does not provide motivation to encapsulate the pellet with a biocompatible container as in the claimed invention.

Applicant's arguments have been considered and are non-persuasive because in column 3, lines 55-63, of Suthanthiran et al, it is disclosed that the metallic radio opaque marker rods are coated with binder and radioactive absorbing material in an airborne tumbling process which resembles a fluidized bed system. Suthanthiran et al describes

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one such system wherein the tungsten rods are fluidized by blowing a suspension of carbon particles in cellulose acetate dissolved in acetone upwardly through a bed of the rods. As a result, the rods are substantially uniformly coated with a carbon in cellulose acetate matrix. Thus, a skilled practitioner in the art would recognize that while the prior art discloses that the radioactive material is an absorbing material, when it is substantially uniformly coated on the rods, it is the surface that is coated. Hence, adsorption of the radioactive material has occurred even though the material is referred to as an radioactive absorbing material. Furthermore, Suthanthiran et al disclose that it is desirable to have a sufficient quantity of binder to hold the radioactive absorbing material on the substrate while a large amount of the material is available for absorption (column 4, bridging paragraph). Thus, a skilled practitioner in the art would once again recognize that the material on the substrate is the material on the surface of the substrate is a result of the material being adsorbed on to the surface. The other remaining material which Suthanthiran et al discloses is material that is available for absorption of the radioactive material. Therefore, a skilled artisan would conclude that Suthanthiran et al discloses both adsorption and absorption of their radioactive absorbing material. In other words, while a large amount of the radioactive absorbing material of Suthanthiran et al is available for absorption, some of the material is adsorbed on the surface as well. Once again, the analogy of a sponge which absorbs some liquid while also having some liquid adsorbed to the surface is made to illustrate the process that is taking place in Suthanthiran et al. Hence, the rejection is deemed proper and is maintained.

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Applicant's argument in regards to the container not being biocompatible is not persuasive because the pellets of Suthanthiran et al are used as radioactive seeds.

The radioactive seed is used for medical radiological treatments and comprise a metallic x-ray detectable marker rod coated with a radioactive absorbing material. The pellets may be encapsulated in a material such as titanium to form an effectively seal radioactive seed which is useful in certain medical radiological treatment (see Suthanthiran et al, abstract, for example)

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. L. Jones whose telephone number is (571) 272-0617. The examiner can normally be reached on Mon.-Fri., 6:45 a.m. - 3:15 p.m..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hartley can be reached on (571) 272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


D. L. Jones
Primary Examiner
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September 15, 2006